FILE COPY

Office Supreme Court, U
FILED
APR 7 1930
CHARLES ELMORE

No. 732

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA, APPELLANT

v.

JAMES E. FARRAR

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	5
Specification of errors to be urged	6
Summary of argument	6
Argument:	
I. The question involved should be viewed in the light of the ultimate aim and purpose of the national prohibition act which is to prevent the use of intoxicating liquor as a beverage	8
II. The failure to include the purchase of liquor in the enumeration of acts prohibited by section 3 does not establish that Congress intended that the purchase of liquor should not be an offense	10
III. The purchase of liquor for a purpose not authorized by the act is within the terms of the prohibition of section 6	12
IV. Considerations tending to show that the purchase of liquor except as authorized by the national prohibition act is not an offense under that act	15

CITATIONS

Cases:	
Bombinski v. *State*, 183 Wis. 351	13
Corneli v. *Moore*, 257 U. S. 491	8
Donnelley v. *United States*, 276 U. S. 505	9, 14
Feinberg v. *United States*, 2 F. (2d) 955	12
Fritzel v. *United States*, 17 F. (2d) 965	10
Goldberg v. *Yellowley*, 290 Fed. 389	10
Lott v. *United States*, 205 Fed. 28	15
McCarren v. *United States*, 8 F. (2d) 118	12
Norris v. *United States*, 34 F. (2d) 839; No. 555, Oct. Term, 1929	23
Schnitzler v. *Yellowley*, 290 Fed. 849	10
Selzman v. *United States*, 268 U. S. 466	10
Singer v. *United States*, 278 Fed. 415	22
United States v. *Dodson*, 268 Fed. 397	10
United States v. *Katz*, 271 U. S. 354	23
United States v. *Kerper*, 29 F. (2d) 744	23
Vannata v. *United States*, 289 Fed. 424	22
Williams v. *United States*, 3 F. (2d) 933	12
Yudelson v. *Andrews*, 25 F. (2d) 80	9

Statutes:	Page
Comp. Stats., Nebr., 1922, sec. 3238	20
Laws of Nebraska, 1917, c. 187, sec. 2, p. 426	20
National prohibition act, c. 85, 41 Stat. 305, 308, 310, 316, Title II—	
Sec. 3 (U. S. C., title 27, sec. 12)	2
Sec. 6 (U. S. C., title 27, sec. 16)	2
Sec. 29 (U. S. C., title 27, sec. 46)	4
Sec. 32 (U. S. C., title 27, sec. 49)	12
Miscellaneous:	
Cong. Rec., vol. 55, part 6, p. 5647	17
Cong. Rec., vol. 58, part 3—	
P. 2512	20
P. 2802	21
House Report No. 91, 66th Cong., 1st sess.—	
P. 2	19
P. 7	19
Senate Report No. 151, 66th Cong., 1st sess., p. 20	18

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 732

THE UNITED STATES OF AMERICA, APPELLANT

v.

JAMES E. FARRAR

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 2) has not yet been reported.

JURISDICTION

The judgment to be reviewed was entered March 7, 1930. (R. 2.) Appeal to this Court was petitioned for and allowed on March 8, 1930. (R. 5.) The jurisdiction of this Court rests upon the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925. (See

Jurisdictional Statement of Appellant, filed March 14, 1930.)

QUESTION PRESENTED

The single question presented is whether it is an offense under the National Prohibition Act to purchase intoxicating liquor except as authorized in that Act.

STATUTES INVOLVED

Sections 3, 6, and 29, Title II, of the National Prohibition Act, c. 85, 41 Stat. 305, 308, 310, 316 (U. S. C., Title 27, Secs. 12, 16, and 46) provide, so far as here important:

> SEC. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.
>
> Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: * * *.
>
> SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person

may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided * * *.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided,* That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided further,* That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. * * * Every permit shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in Section 5 hereof.

* * * * *

SEC. 29. Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than $1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than $200 nor more than $2,000 and be imprisoned not less than one month nor more than five years.

Any person violating the provisions of any permit, or who makes any false record, report, or affidavit required by this title, or violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined for a first offense not more than $500; for a second offense not less than $100 nor more than $1,000, or be imprisoned not more than ninety days; for any subsequent offense he shall be fined not less than $500 and be imprisoned not less than three months nor more than two years. * * *

STATEMENT

The appellee was indicted in the District Court of the United States for the District of Massachusetts (R. 1) upon the charge that he—

> did unlawfully and knowingly purchase from one Frank Rotondo of Medford in said district intoxicating liquor containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes as defined in the act of Congress of October 28, 1919, commonly known as the national prohibition act, to wit, two pints, more or less, thereof.

A motion to quash the indictment on the ground that it failed to charge an offense indictable under the laws of the United States (R. 1) was sustained and the indictment quashed. (R. 2.) In an opinion simultaneously handed down the District Court gave as reasons for its action that the purchase of liquor is not included among the acts prohibited by Section 3, Title II, of the National Prohibition Act; that the prohibition of Section 6 against the purchase of liquor without a permit applies only to persons to whom permits to purchase may lawfully issue under the Act, and that the provision of Section 29 imposing a penalty for a violation of any provision of Title II for which a special penalty is not prescribed relates only to permittees.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred—

(1) In quashing the indictment.

(2) In holding that it is not an offense under the National Prohibition Act to purchase liquor except as authorized by that Act.

(3) In holding that the prohibition of Section 6 of Title II against the purchase of liquor without a permit applies only to those to whom permits may lawfully issue under the Act.

(4) In holding that the provision of Section 29 prescribing penalties for offenses for which a special penalty is not imposed relates only to permittees.

SUMMARY OF ARGUMENT

The question whether it is an offense under the National Prohibition Act to purchase liquor except as authorized in that Act should be viewed in the light of the ultimate aim and purpose of the Act, which is to prevent the use of intoxicating liquor as a beverage.

The fact that the purchase of liquor is not included in the enumeration of acts made offenses by Section 3 of Title II does not establish that Congress did not intend to make the purchase of liquor an offense. The Act defines many offenses other than those enumerated in Section 3.

The purchase of liquor for a purpose not authorized by the Act comes within the terms of the prohibition of Section 6 of Title II that "No one

shall * * * purchase * * * any liquor without first obtaining a permit from the commissioner so to do * * *." To hold that that provision applies only to authorized purchases of liquor would give the statute the effect of making the purchase of liquor without a permit an offense if the liquor was purchased for a lawful purpose, but not an offense if the liquor was purchased for a proscribed purpose, such as for use as a beverage. Such a construction would appear to run counter to the provision of Section 3, that "all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

That a special penalty is not imposed by Title II for the unauthorized purchase of liquor is no indication that Congress did not intend to make that act an offense. The only penalties specially imposed by that title are for the maintenance of a "common nuisance" and for the illegal manufacture and sale of liquor. The penalties for all other violations of Title II are prescribed by the provision of Section 29 that "Any person * * * who * * * violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined * * *." That provision is clearly not confined to violations by permittees.

In order to assist the Court in reaching a conclusion upon the question involved in this case its

attention is directed also to certain considerations tending to show that the unauthorized purchase of liquor may not be an offense under the National Prohibition Act, and the Government submits the question for the decision of this Court.

ARGUMENT

I

THE QUESTION INVOLVED SHOULD BE VIEWED IN THE LIGHT OF THE ULTIMATE AIM AND PURPOSE OF THE NATIONAL PROHIBITION ACT WHICH IS TO PREVENT THE USE OF INTOXICATING LIQUOR AS A BEVERAGE

In the consideration of the question involved in this case it should be borne in mind that the dominant purpose of the National Prohibition Act is the prevention of the consumption of intoxicating liquor as a beverage. That purpose unmistakably appears from the declaration of Section 3, Title II, that "all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." It has, moreover, been repeatedly recognized and given effect by the courts. Thus, in *Corneli* v. *Moore*, 257 U. S. 491, this Court, in passing upon contentions of the appellants that, having acquired ownership of liquor in bonded warehouses by the purchase of warehouse receipts, they had the right to pay the required tax and remove the liquor to their homes, said (p. 496):

> To accept them [the appellants' contentions] would defeat the purpose of the act

> and its achievement of the mandate of the Constitution. * * * And, as we have said, the act declares (Sec. 3) that all of its provisions shall be liberally construed "to the end" to quote its words, "that the use of intoxicating liquor as a beverage may be prevented." The method of appellants, we think, tended to the opposite effect; tended to the use of liquor as a beverage—not its prevention.

In *Donnelley* v. *United States,* 276 U. S. 505, where the question was whether the intentional failure by a Federal prohibition director to report to the United States Attorney a violation of the National Prohibition Act of which he had actual knowledge was an offense under Section 2, Title II, of that Act, the defendant contended in this Court that the requirement that such a report should be made was directory only; that Congress did not intend that a failure to report should be a punishable offense, and that the statute should be strictly construed in favor of the accused. Regarding the contention last mentioned, this Court, in an opinion affirming the conviction, said (p. 512):

> Section 3 forbids a narrow or strict construction of the Act, and directs that all its provisions "shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

And in *Yudelson* v. *Andrews,* 25 F. (2d) 80, the Circuit Court of Appeals for the Third Circuit similarly declared (p. 82):

> A reading of the National Prohibition Act reveals that its one purpose is to stop the use of intoxicating liquor as a beverage. All of its provisions are devoted to ways and means to attain that end.

See also, *Selzman* v. *United States*, 268 U. S. 466, 468; *United States* v. *Dodson* (S. D. Cal.), 268 Fed. 397, 400; *Goldberg* v. *Yellowley* (E. D. N. Y.), 290 Fed. 389, 390; *Schnitzler* v. *Yellowley* (E. D. N. Y.), 290 Fed. 849, 853; *Fritzel* v. *United States* (C. C. A. 7th), 17 F. (2d) 965, 967.

That the sale of intoxicating liquor except as authorized therein is made an offense by the National Prohibition Act can not be disputed. There can be no sale without a corresponding purchase. To hold that the unauthorized purchase of liquor is not an offense under the Act is to say that Congress has refrained from adopting a means equally effective as the prohibition against sale to achieve the underlying object of the Act. We submit that such a purpose can not be ascribed to Congress unless the Act contains no provision which, when liberally construed as required by Section 3, shows an intent to prohibit and punish such a purchase of liquor.

II

THE FAILURE TO INCLUDE THE PURCHASE OF LIQUOR IN THE ENUMERATION OF ACTS PROHIBITED BY SECTION 3 DOES NOT ESTABLISH THAT CONGRESS INTENDED THAT THE PURCHASE OF LIQUOR SHOULD NOT BE AN OFFENSE

The first ground upon which the District Court based its decision that the indictment in this case

fails to charge an offense under the National Prohibition Act is that the purchase of liquor is not included in the enumeration of acts prohibited by Section 3. But there are many acts and omissions, some relating to transactions authorized under regulations and permits and some to transactions wholly prohibited, which, though not included in that enumeration, are unquestionably made offenses by the National Prohibition Act and punishable under Section 29. Among them are the failure of investigating officers to report violations to the United States Attorneys (Section 2); the use or disposition of intoxicating liquor by manufacturers of denatured alcohol, medicinal or toilet preparations, flavoring extracts, etc., otherwise than as an ingredient of such articles (Section 4); the sale by any person of any of such articles for beverage purposes (Section 4); the prescribing of liquor by anyone not a physician holding a permit to do so, as well as the prescribing by such a physician of liquor otherwise than in good faith as a medicine (Section 7); the failure to keep a record of liquor manufactured, purchased for sale, sold, or transported (Section 10); the failure of the manufacturer of liquor to attach to each container thereof a prescribed label (Section 12); the advertising of where or from whom liquor may be obtained (Section 17); the maintenance of a "common nuisance" (Section 21), and the possession of property designed for the manufacture of liquor in-

tended for illegal use (Section 25). It does not necessarily follow, therefore, that the omission from what the court below calls "the basic prohibitory section" of a prohibition against the purchase of liquor indicates that Congress did not intend to make that act an offense.

III

THE PURCHASE OF LIQUOR FOR A PURPOSE NOT AUTHORIZED BY THE ACT IS WITHIN THE TERMS OF THE PROHIBITION OF SECTION 6

In opposing the motion to quash the Government relied in the court below upon the provision of Section 6, that "No one shall * * * purchase * * * any liquor without first obtaining a permit from the commissioner so to do * * *." The indictment did not, it is true, allege that the liquor was purchased without a permit. But the possession of a permit authorizing such purchase was a matter of defense which it was unnecessary to negative in the indictment. Section 32, Title II; *Williams* v. *United States* (C. C. A. 6th), 3 F. (2d) 933, 934; *Feinberg* v. *United States* (C. C. A. 8th), 2 F. (2d) 955–956; *McCarren* v. *United States* (C. C. A. 7th), 8 F. (2d) 113, 114. The above provision of Section 6, that *no person* shall purchase liquor without obtaining a permit, taken in the plain, ordinary sense of its language, is manifestly broad enough to embrace *all persons,* and, therefore, to include the appellee. The District Court failed, however, to give that provision literal effect,

but ruled that it is confined in its application to persons to whom permits may issue. Such a construction has the anomalous effect of making the purchase of liquor without a permit an offense under the statute if the liquor is purchased for lawful purposes, but not an offense if the liquor is purchased to be disposed of illegally. It would result therefrom, for example, that a druggist who purchased whiskey for the purpose of dispensing it upon physicians' prescriptions, or a manufacturer of medicinal preparations or toilet articles who purchased distilled spirits for use in his business, would be subject to prosecution under Section 6 if he purchased such liquor without a permit; whereas if the same druggist or manufacturer purchased liquor without a permit for his own beverage consumption or for sale for beverage use by others, he would be exempt from prosecution under that statute. This would appear to run counter to the command of Section 3 that "all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

In *Bombinski* v. *State,* 183 Wis. 351, where the plaintiff in error had been convicted of the purchase of liquor in violation of Subdivision 7, Section 1543, Wisconsin Statutes, 1921, which was substantially identical with the provision of Section 6 here involved, the Supreme Court of Wisconsin sustained the conviction upon evidence which

showed that the plaintiff in error had purchased illegally manufactured liquor.

The further holding of the District Court that had Congress intended to make the purchase of liquor by the ordinary buyer a criminal offense it would have expressly prescribed a penalty for buying, as it did for selling, and that the provision of Section 29 upon which the Government relied as prescribing the punishment for the purchase of liquor for unauthorized purposes "appears to relate to permittees," is plainly unsound. There is no more reason for assuming that the failure to provide a special penalty for the purchase of liquor shows the intent of Congress not to make that act an offense than there is for assuming that the unauthorized transportation, importation, exportation and possession of liquor are not offenses because no special penalties are provided therefor. The only penalties specially imposed by Title II are those for maintaining a "common nuisance" (Section 21), and for the illegal manufacture and sale of liquor (Section 29). The penalties for all other violations of Title II are prescribed by the provision of Section 29: "Any person * * * who * * * violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined," etc. See *Donnelley* v. *United States, supra,* pp. 513–515. Manifestly, that provision is not confined to violations by permittees.

IV

CONSIDERATIONS TENDING TO SHOW THAT THE PURCHASE OF LIQUOR EXCEPT AS AUTHORIZED BY THE NATIONAL PROHIBITION ACT IS NOT AN OFFENSE UNDER THAT ACT

In the points heretofore discussed we have endeavored to present the arguments in support of the indictment. On the other hand, we feel it our duty to the Court to call attention to the following matters tending to show that an unauthorized purchase of liquor may not be a crime.

1. In *Lott* v. *United States* (C. C. A. 9th), 205 Fed. 28, decided in 1913, the plaintiff in error, an Indian, sought review of his conviction in Alaska of having solicited and incited another to sell him liquor. The purchase of liquor, whether by an Indian or other person, was not an offense in that territory, and the indictment was based on the theory that, in soliciting and inciting the commission of the crime of selling, Lott had committed an offense under the common law. The Circuit Court of Appeals set aside the conviction. After citing many State court decisions as indicating that it was the general, if not universal, policy of the liquor laws of the States not to make the purchase of liquor an offense, the court declared that unless Congress intended to make the purchase of liquor unlawful, the plaintiff in error's solicitation of another to sell liquor to him could not be regarded as an offense. As to the intent of Congress it said (p. 31):

> The meaning of the act should be found in the light of the anterior legislation on

the same subject, legislation not of Congress only, but of the states, and the decisions of the courts, and the general understanding as to the meaning and scope of similar statutes, resulting, in a sense, in a common law of the states on that subject. Section 142 of the Criminal Code of Alaska, as it was originally enacted, made the act of selling intoxicating liquor to Indians a misdemeanor only. In February, 1909 (Act Feb. 6, 1909, c. 80, Sec. 9, 35 Stat. 603), it was so amended as to increase the severity of the punishment. The amendment did not declare the violation of the section to be a felony, but such is the effect of section 335 of the Criminal Code of 1910. Congress must have been aware of the universal ruling of the courts that under laws prohibiting the sale of intoxicating liquors the purchaser committed no offense. We are not justified in assuming that, in so amending the law and increasing the punishment for its violation, it was the intention to make criminal, and subject to punishment as a crime, the act of purchasing or attempting to purchase intoxicating liquors, which theretofore had been innocent acts. If such had been the intention of Congress, it is but reasonable to presume that it would have been expressed in such clear terms as to admit of no doubt. In the absence of such express legislation, we are authorized to presume that Congress deemed it of greater advantage to the Government in enforcing the law to leave the Indian who might succeed in purchasing

liquor in Alaska free to testify in the courts against the seller thereof, than to punish the Indian for purchasing, or offering to purchase, the same.

2. On August 1, 1917, when the joint resolution proposing the Eighteenth Amendment for adoption by the States was under consideration in the Senate, Senator Hardwick offered as an amendment to Section 1 that the words "purchase, use," be inserted after the word "sale," so that that section, as thus amended, would prohibit the "manufacture, sale, *purchase, use,* or transportation of intoxicating liquors," etc.

After considerable debate the following occurred (Cong. Rec., Vol. 55, Part 6, p. 5647):

> The PRESIDENT pro tempore. The pending question is on the amendment of the Senator from Georgia (Mr. Hardwick).
>
> Mr. SHEPPARD. Mr. President, I hope the amendment of the Senator from Georgia will be voted down. It is not necessary to the accomplishment of the purposes of the resolution. We should employ in the organic law as few terms as possible in order to reach the purpose we have in mind.
>
> The amendment now framed prohibits the manufacture of intoxicating liquors within the limits of the Republic and the importation of such liquors into the Republic. It destroys the traffic in intoxicating liquors. With that object accomplished, use will cease and purchase will cease, and therefore it is unnecessary to have specific provisions

> as to purchase and use embodied in the amendment. I trust that the amendment of the Senator from Georgia will be rejected.
>
> Mr. HARDWICK. Does the Senator state any specific objection to my amendment?
>
> Mr. SHEPPARD. I say it is unnecessary, and I do not want to put any unnecessary language in the constitutional amendment.

Senator Hardwick's amendment having been put to a vote, it was defeated sixty-two to four (p. 5648).

The fact, however, that a prohibition against the purchase of liquor for beverage purposes was intentionally omitted from the Eighteenth Amendment does not necessarily mean that such a purchase is not made unlawful by the National Prohibition Act. Many acts not mentioned in the Amendment, including the possession of intoxicating liquor, the maintenance of a common nuisance, and the advertising of liquor, are made offenses by that Act.

3. Dealing with the permissive features of H. R. 6810, 66th Congress, which became the National Prohibition Act, the Senate Judiciary Committee in its report on that bill said (S. Rep. No. 151, p. 20, 66th Cong., 1st Sess.):

> The provisions requiring those who sell or manufacture liquor for nonbeverage purposes to secure a permit is a continuation of the system now enforced by the Federal authorities. It is the most effective means to insure obedience to the law and prevents the

> diversion of liquor for illegal purposes. It is a slight burden on the law-abiding citizens who are dealing in liquor for legal purposes.

Upon the same subject the House Judiciary Committee in its report on H. R. 6810 said (H. Rep. No. 91, p. 2, 66th Cong., 1st Sess.):

> Title 2, to enforce prohibition under the eighteenth amendment to the Constitution, contains substantially the same features as title 1 and in addition a system of permits such as is now in force under regulations of the Revenue Department, Treasury Decision 2788, and in the various prohibition codes. These permits are designed to prevent diversion of liquor from legal to illegitimate uses. This system greatly lessens prosecution by making it difficult for persons to obtain liquor except for legitimate purposes. In addition to the permit system, which is also provided for in title 3 (the industrial-alcohol section) the act carries a number of the more essential penal provisions of the ordinary prohibition codes, such as those against advertising liquor.

With reference to Title II in general it was said on page 7 of H. Rep. No. 91:

> Title 2 for the enforcement of the eighteenth amendment has in it no new or experimental features: Every provision in it has precedents in State or Federal legislation. Many States have provisions in their laws that are much more drastic than any contained in this bill.

4. When discussing the origin of the bill on the floor of the House, Mr. Volstead, chairman of the Judiciary Committee, observed (Cong. Rec., Vol. 58, Part 3, p. 2512):

> No one should draw a bill of this kind without making use of legislation that has been tried out in other jurisdictions. Anyone who would attempt to originate a bill without doing that would be exceedingly foolish. The bill was largely modeled on the Ohio law. I have the Ohio statute, and you will find a large number of these provisions in that statute. And, by the way, the Ohio statute is much more drastic than the provisions of this bill. I have it here so that I can satisfy anyone who is curious on the subject. Every State, I believe, that has a prohibition law has the essential features of this bill, including Iowa, Oregon, Kansas, North Dakota, South Dakota, Minnesota, Nebraska, Idaho, Alaska, Washington, and I might mention a number of others.

An examination of the prohibition laws here referred to by Mr. Volstead shows that only in Nebraska was the purchase of beverage liquor an offense. There the "purchase" of intoxicating liquor except for medicinal, mechanical, scientific, or sacramental purposes was included among the acts declared unlawful. (Laws of Nebraska, 1917, c. 187, Sec. 2, p. 426; Comp. Stats., Neb., 1922, Sec. 3238.)

5. As introduced in the House, H. R. 6810 provided in that part which is now the second paragraph of Section 3:

> Liquor for nonbeverage purposes and wine for sacramental purposes may be purchased, sold, transported, and used as herein provided.

Mr. Volstead proposed to amend the foregoing provision by striking out all after the word " be" and inserting "manufactured, sold, bartered, given away, transported, imported, exported, delivered, furnished, received, possessed, and used, but only as herein provided and permits may be issued therefor." The record shows the following to have thereupon occurred (Cong. Rec., Vol. 58, Part 3, p. 2802):

> Mr. GARD. Mr. Chairman, I move to amend by including the word "purchased."
>
> Mr. JOHNSON of Kentucky. I desire to offer a perfecting amendment.
>
> Mr. GARD. After the word "manufactured," in what came from the chairman of the committee—I ask for the attention of the chairman of the committee—is it not the purpose of the gentleman also to include the word "purchased"? The gentleman struck out the language after "may be" and inserted the word "manufactured" and other words. Did not the gentleman also intend to include the word "purchased"?
>
> Mr. VOLSTEAD. There is no prohibition expressly against purchase in the first part of the section, and it is not necessary.
>
> The CHAIRMAN. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

After the word "manufactured" insert the word "purchased."

Mr. VOLSTEAD. I have no objection.

The question was taken, and the amendment was agreed to.

6. Section 32, Title II, of the National Prohibition, provides that "It shall not be necessary in any affidavit, information, or indictment to give the name of the purchaser." This apparently was intended to apply only to charges of sale and to obviate the necessity of naming the person to whom the sale was made. It can not have application to other offenses, such as possession, transportation, etc., nor of course can it have application to a charge of purchase if purchase is a crime.

7. From the passage of the National Prohibition Act down to the time the indictment in this case was submitted to the grand jury, a period of approximately ten years, the National Prohibition Act was construed by the administrative departments charged with its enforcement as not making the purchase of liquor an offense. The reports fail to disclose any other case in which such a charge was brought.

8. In the following cases courts have said *obiter* that the purchase of liquor is not an offense:

Singer v. *United States* (C. C. A. 3d), 278 Fed. 415, 419.

Vannata v. *United States* (C. C. A. 2d), 289 Fed. 424, 428.

United States v. *Kerper* (E. D. Pa.), 29 F. (2d) 744, 745.

Norris v. *United States* (C. C. A. 3d), 34 F. (2d) 839, 841, pending in this Court on writ of certiorari (No. 555, Oct. T., 1929).

9. In *United States* v. *Katz*, 271 U. S. 354, where the question was whether the defendants in error came within the effect of the prohibition of Section 10, Title II, of the National Prohibition Act, that "No person shall * * * sell * * * any liquor without making at the time a permanent record thereof," this Court held that Section 10 is one of a group of sections, including Section 6, which apply only to those dealing in liquor for purposes authorized by the Act.

As the application of Section 6 was not directly involved in the *Katz case*, the statement of this Court therein with reference to that section is not decisive of the question in the instant case.

CONCLUSION

Upon the foregoing discussion the Government submits the question here involved for the decision of this Court.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

G. A. YOUNGQUIST,
Assistant Attorney General.

JOHN J. BYRNE,
Attorney.

APRIL, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930